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9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12
13 **RYAN TUTTLE,**

14 Plaintiff,

15 v.

16
17 **RICHARDSON'S BAY REGIONAL**
AGENCY, ET AL.,

18 Defendants.

3:21-cv-03019-CRB

**ATTORNEY GENERAL'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO INTERVENE TO DEFEND
THE CONSTITUTIONALITY OF
CALIFORNIA HARBORS AND
NAVIGATION CODE SECTIONS 550
AND 551**

[Related Case: *Kelly v. Richardson's Bay
Regional Agency et al*, Case No. 20-cv-06791
CRB]

Date: August 13, 2021
Time: 10:00 a.m.
Dept: Courtroom 6
Judge: Hon. Charles R. Breyer
Trial Date: Not Scheduled
Action Filed: April 26, 2021

MEMORANDUM OF POINTS AND AUTHORITIES

I. THE ATTORNEY GENERAL MAY INTERVENE IN THIS ACTION AS A MATTER OF RIGHT TO DEFEND THE CONSTITUTIONALITY OF CALIFORNIA LAW.

Rob Bonta, Attorney General of California, moves to intervene in this case under Federal Rules of Civil Procedure 5.1(c) and 24(a)(1), and 28 U.S.C. § 2403(b), for the limited purpose of defending the constitutionality of California Harbors and Navigation Code sections 550 and 551.

On April 27, 2021, Plaintiff Ryan Tuttle filed a “Notice that Constitutionality of a State Statute is Questioned” under Federal Rule of Civil Procedure 5.1(a). ECF No. 7. In that Notice, Plaintiff stated that within the fourth cause of action of his Complaint (ECF No. 1), “the constitutionality is questioned of Harbors and Navigation Code, Chap. 3, Art. 3, §§550, 551, to wit: whether said statutory scheme violates Due Process requirements by not providing for a hearing.” ECF No. 7. The Court has not yet certified the constitutional question as provided for under Rule 5.1(b) and 28 U.S.C. § 2403.

The Attorney General is entitled to intervene in this case as a matter of right under both the Federal Rules of Civil Procedure and statute. Rule 5.1(c) permits the Attorney General to intervene in an action where, as here, the constitutionality of a state statute is challenged. See Fed. R. Civ. P. 5.1(c). Rule 24 further permits a non-party to intervene when the non-party “is given an unconditional right to intervene by a federal statute.” Fed. R. Civ. P. 24(a)(1). The California Attorney General has an unconditional statutory right to intervene “[i]n any action ... wherein the constitutionality of any statute of [the] State affecting the public interest is drawn in question” 28 U.S.C. § 2403(b). In such an action, “the court ... shall permit the State to intervene ... for argument on the question of constitutionality.” *Id.*

Here, Plaintiff has “drawn in question” the constitutionality of California Harbors and Navigation Code sections 550 and 551, and the Attorney General has an unconditional right to intervene to defend these statutes. The Attorney General has filed a memorandum in defense of the constitutionality of the Harbors and Navigation Code concurrently with this Motion. The Attorney General’s intervention, including the filing of a memorandum in support of the

1 constitutionality of Harbors and Navigation Code sections 550 and 551, will not interfere with the
2 timely adjudication of this action. This Motion is also timely, as it has been filed within 60 days
3 of the date Plaintiff's Notice of Constitutionality was filed on April 27, 2021, as required under
4 Federal Rule of Civil Procedure 5.1(c). *See* ECF. No. 7.

5 **CONCLUSION**

6 For the reasons asserted above, the Attorney General respectfully requests that the Court
7 grant leave to intervene for the limited purpose of defending the constitutionality of California
8 Harbors and Navigation Code sections 550 and 551.

9 Dated: June 25, 2021

Respectfully submitted,

10
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